No. 82-432

Office - Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS, ET AL., PETITIONERS

v.

JEROME CROWLEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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QUESTION PRESENTED

Whether the enforcement system created by Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482, for violations of the Act occurring in the course of a union election precludes a court from enjoining the counting of ballots and ordering a new election under the supervision of the court in order to remedy violations of Title I of the Act occurring at a nominations meeting.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 41a-93a) is reported at 679 F. 2d 978. The opinion of the district court (Pet. App. 1a-40a) is reported at 521 F. Supp. 614.

JURISDICTION

The judgment of the court of appeals (Pet. App. 94a) was entered on May 21, 1982. A petition for rehearing was denied on June 15, 1982 (Pet. App. 95a). The petition for a writ of certiorari was filed on September 13, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. 411, 412, 481, 482, and 483, are set out at Pet. App. 96a-103a.

STATEMENT

1. On November 9, 1980, a meeting was held to nominate candidates for the seven-member executive board of petitioner Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers ("Local No. 82"). The election was a controversial one, and several disputes arose in the course of the nomination meeting. One concerned the requirement that Local members show a computerized dues receipt in order to be admitted to the meeting (Pet. App. 43a). The district court found that such a requirement had not been imposed at earlier meetings (*id.* at 19a). Several members, including respondent Jerome Crowley, were denied admission for lack of a receipt (*ibid.*).

The second controversy occurred when nominations were made. Petitioner Bart Griffiths, the incumbent secretary-treasurer of the Local who was conducting the meeting, was nominated for reelection to that position. The district court found that respondent John Lynch was also nominated for secretary-treasurer, though Griffiths ignored the nomination and announced that he was running unopposed (Pet. App. 21a). Griffiths included Lynch among the candidates for president (*id.* at 44a).

Crowley, Lynch, and others filed a protest concerning the conduct of the nominations meeting with Local No. 82, with Teamsters Joint Council 10, and with the International Union. On November 20, 1980, Local No. 82 denied the

protests.[1] Ballots were thereafter mailed to Local members (Pet. 4) and were to be received by the Local no later than 9:00 a.m. on December 13, 1980.

2. On December 1, 1980, respondents filed this action in the United States District Court for the District of Massachusetts on behalf of themselves and two classes of members (not certified by the district court) against petitioners Local No. 82, Griffiths, the president of the Local, and members of its election committee. Respondents alleged that petitioners had violated several provisions of Title I of the LMRDA and sought preliminary injunctive relief (Pet. App. 2a-3a, 44a-46a). In particular, respondents claimed that restricting admission to those with dues receipts and the failure to recognize Lynch as a candidate for secretary-treasurer violated Section 101(a)(1) ("equal rights * * * to nominate candidates * * * [and] to attend membership meetings") and Section 101(a)(2) ("right to meet and assemble freely with other members; * * * and to express * * * views [] upon candidates") of the Act, 29 U.S.C. 411(a)(1) and (2).[2]

On December 12, 1980, the district court issued a temporary restraining order preventing the Local from counting the ballots, some of which had already been received. On July 13, 1981, the court issued a preliminary injunction declaring the nominations received at the November 9, 1980 meeting to be "legally without effect" and ordering a new

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[1] A hearing before Joint Council 10 was cancelled when this action was filed. No action was taken by the International Union (Pet. App. 15a-16a).

[2] Respondents also made several claims under Titles I and IV concerning increases of local dues and concerning the union rule that only members who have paid their dues on time for the 24 months preceding the nominations meeting may be candidates (Pet. App. 7a-8a). The district court declined for a variety of reasons to grant preliminary relief on these claims (*id.* at 12a, 22a-23a, 25a-37a).

nominations meeting and mail ballot election to be supervised and conducted by Lawrence Katz and the Honest Ballot Association of New England ("the arbitrators") (Pet. App. 86a). The injunction set forth the eligibility requirements for attendance at the nominations meeting, candidacy for office, and voting, and directed that disputes about eligibility would be resolved by the arbitrators (*id.* at 87a-91a). It also provided that the arbitrators were to make arrangements consistent with the union's by-laws and constitution for distribution of campaign literature (*id.* at 91a).

3. Petitioners appealed, and the Secretary of Labor intervened in the appeal. They argued that the district court lacked authority to enjoin the tabulation of ballots and order new court-supervised nominations and an election as a corrective for Title I violations occurring in the course of the election. Petitioners and the Secretary contended that, under those circumstances, the exclusive remedy was the post-election procedure afforded in Title IV of the LMRDA. Section 402 (29 U.S.C. 482) provides that a member complaining of violations in the course of an election must, after exhausting his remedies within the union, file a complaint with the Secretary. If, after investigation, the Secretary finds probable cause to believe that a violation has occurred, he may initiate an action to have the election set aside and a new one conducted "under supervision of the Secretary * * *." Section 403 (29 U.S.C. 483) also provides that "[t]he remedy provided by this subchapter for challenging an election already conducted shall be exclusive." Petitioners and the Secretary argued that to permit court-ordered and supervised elections as a remedy for violations of Title I would frustrate the very purposes underlying Title IV: avoidance of delay in the conduct of elections, a preference for resolution of such problems, where possible, by the union itself, screening of frivolous

complaints and consolidation of apparently meritorious ones by the Secretary, and reliance on the Secretary's expertise in supervising remedial elections.

The court of appeals affirmed (Pet. App. 41a-85a). The court found no indication in the decisions of this Court that Title IV remedies, including ordering a new election, were intended to displace the relief available to a court in actions under Title I (*id.* at 49a-52a). It also found in the legislative history of the LMRDA "no evidence that limitations on Title I by Title IV were ever contemplated" (*id.* at 58a-59a). The court found inapplicable the "exclusive remedy" provision in Section 403 since, it concluded, an election is not "already conducted" within the meaning of that section "until all the ballots are counted" (Pet. App. 67a)—a situation, thanks to the district court's temporary restraining order, not presented in this case.[3]

Judge Campbell dissented. He would have held that "the proper accommodation between Title I and Title IV requires consideration not only of the stage which the election process has reached but the nature of the relief" (Pet. App. 83a). Judge Campbell concluded that, if a new supervised election would be required to remedy election violations perceived by the district court in a case such as this, "many concerns argue against finding Title I jurisdiction: intrusiveness, delay, disruption, and the court's lack of expertise in this area, especially as compared to the Secretary" (*ibid.*).

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[3]The court of appeals also rejected claims by petitioners that the preliminary injunction was improper under traditional equitable principles and that the district court had improperly refused to require respondents to post a bond (Pet. App. 68a-82a).

DISCUSSION

As the court of appeals' opinion indicates, the lower courts have struggled to accommodate the overlapping rights and conflicting remedies provided in Titles I and IV of the LMRDA. The results have been diverse and largely unsuccessful. Resolution of the confusion by this Court is important, because the issue can arise in many of the large number of union elections held each year. Moreover, the decision below is incorrect. By permitting Title I nullification of an election and approving a judicially supervised rerun, the court of appeals' ruling ignores the concern, expressed by this Court, that Title I not be used to undermine the important statutory policies implemented by the Title IV remedial scheme.

1. Title I of the LMRDA, the "Bill of Rights" title, grants union members several rights relevant to the election process. Section 101(a)(1) of the Act (29 U.S.C. 411(a)(1)) gives

> [e]very member of a labor organization * * * equal rights * * * to nominate candidates, to vote in elections * * * to attend membership meetings, and to participate in the deliberations * * * of such meetings * * *.

Section 101(a)(2) (29 U.S.C. 411(a)(2)) gives

> [e]very member * * * the right to meet and assemble freely with other members; * * * and to express * * * his views[] upon candidates in an election of the labor organization * * *.

Title IV of the LMRDA, the "Elections" title, creates a system of election procedures and related rights for union members. Of particular relevance to this case, Section 401(e) (29 U.S.C. 481(e)) provides that

> [i]n any election required by this section * * * a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be

> eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate * * * of his choice * * *.

The parallel rights granted by Title I and Title IV are enforced by different means. Title I states (29 U.S.C. 412) that

> [a]ny person whose rights secured by [this Title] have been infringed * * * may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

By contrast, Title IV requires exhaustion of internal remedies, followed by the filing of a complaint with the Secretary, who then decides whether to seek judicial review and, where appropriate, a new election "under supervision of the Secretary." 29 U.S.C. 482. Section 403 (29 U.S.C. 483) also states that

> [n]o labor organization shall be required by law to conduct elections of officers * * * in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

The court of appeals construed the "exclusive remedy" provision in Title IV to apply only after the votes in an election have been tabulated (Pet. App. 65a). That interpretation, as the court below recognized, would leave a vacuum unfilled by Section 403. " 'Prior to the day of an election an individual can sue * * *. The day after an election the

Secretary of Labor assumes jurisdiction.' • • • What is meant to happen the day of an election, essentially the problem here, is unsaid" (*id.* at 63a).

Perhaps more important, the court of appeals' approach, which sanctions judicial intervention to prevent the counting of ballots and to order a new election, will have important effects on the remedial structure for LMRDA election violations. There are more than 53,000 labor organizations subject to the requirements of the Act, most of which are local unions required to hold officer elections at least triennially. Labor-Management Services Administration, U.S. Dep't of Labor, *Compliance, Enforcement and Reporting in 1978*, at 29 (1981). Because many challenges to union election procedures can be styled as violations of either Title I or Title IV, complaints arising in the course of such elections may—if quickly filed—result in judicial nullification of an election and court-supervised rerun procedures. The Title IV exhaustion of internal remedies and control of elections by the Secretary deemed desirable by Congress could be substantially displaced.[4]

2. Although the Secretary believes that the court of appeals' decision is at odds with the language and purpose of the Act and the decisions of this Court, the decision is at least understandable in light of the confusion that prevails among the lower courts. What Title I remedies are available, and at what times, in response to election-related violations are issues that have proven uniquely troublesome. Some courts have interpreted this Court's decision in *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), to mean that even

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[4]Although Section 101(a)(4) of the Act, 29 U.S.C. 411(a)(4), indicates that exhaustion of internal remedies concerning Title I claims may be appropriate, this Court has construed the statute to leave the decision within the discretion of the district court. *NLRB* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 426-428 (1968).

before an election is begun, claims that fall under both Title I and IV should be enforced according to Title IV procedures.[5] Others have suggested that an upcoming election may be enjoined in order to enforce free speech or discrimination claims that could also find shelter in Title IV.[6] Some courts have held that claims for injunctive relief under Title I may not be entertained once election ballots have been distributed,[7] or at all events, once they have been returned.[8] The court of appeals in this case found no such constraint. Some courts have even permitted injunctive relief for Title I election claims after the ballots have been counted and the results announced.[9] Others have disagreed.[10] Commentary on the confusion has been prolific.[11]

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[5] *Driscoll* v. *International Union of Operating Engineers*, 484 F. 2d 682, 688 (7th Cir. 1973), cert. denied, 415 U.S. 960 (1974).

[6] *Depew* v. *Edmiston*, 386 F. 2d 710, 712 (3d Cir. 1967); *Canez* v. *Guerrero*, Civ. No. 82-811 PHX-EHC (D. Ariz., June 5, 1982), reproduced at Pet. App. 106a-111a. Cf. *Schonfeld* v. *Penza*, 477 F. 2d 899, 903-904 (2d Cir. 1973).

[7] *Laski* v. *International Organization of Masters, Mates and Pilots*, 502 F. Supp. 134, 135-136 (S.D.N.Y. 1980).

[8] *McDonough* v. *Local 825, International Union of Operating Engineers*, 470 F. 2d 261, 264 (3d Cir. 1982); *New Action Coalition* v. *Local 2, United Federation of Teachers*, 510 F. Supp. 1208, 1211 (S.D.N.Y. 1981).

[9] *Kupau* v. *Yamamoto*, 622 F. 2d 449, 454-457 (9th Cir. 1980); *Kraska* v. *United Mine Workers*, 686 F. 2d 202, 207 (3d Cir. 1982).

[10] *McDonough* v. *Local 825, supra; Venet* v. *Local 606, United Brotherhood of Carpenters*, 342 F. Supp. 819 (D. Minn. 1972). Cf. *McGuire* v. *Grand International Division of the Brotherhood of Locomotive Engineers*, 426 F. 2d 504 (6th Cir. 1970).

[11] See, e.g., *James, Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 Harv. C.R.-C.L.L. Rev. 247 (1978); Comment, *Titles I & IV of the LMRDA: A Resolution of the Conflict of Remedies*, 42 U. Chi. L. Rev. 166 (1974); Note, *Pre-election Remedies Under the Landrum-Griffin Act: The "Twilight Zone" Between Election Rights Under Title IV and the Guarantees of*

In none of the cases referred to, however, has a court taken the extraordinary step of ordering a rerun election with new nominations, to be conducted according to procedures and supervised by arbitrators chosen by the court. Even in those cases that have entertained Title I claims where there was no question that an election had been completed, the relief granted has been the instatement in office of the winning candidates, not the conduct of a new election. *Kupau* v. *Yamamoto, supra*, 622 F. 2d at 453; *Kraska* v. *United Mine Workers, supra*, 686 F. 2d at 207. The remedy approved by the court of appeals in this case ignores the explicit and exclusive procedure set out in Title IV, 29 U.S.C. 482(c), for conducting new elections. It also overlooks the obvious emphasis that Section 403 (29 U.S.C. 483) places on "challenging an election" through Title IV procedures and not otherwise. See also *Dunlop* v. *Bachowski*, 421 U.S. 560, 566 (1975) ("Provisions concerning the conduct of the election itself * * * may be enforced only according to the post-election procedures specified in 29 U.S.C. § 482").

3. In a series of decisions beginning with *Calhoon* v. *Harvey, supra*, this Court has expressed its concern that Title I not be used as a means to bypass the remedies afforded in Title IV, and has stressed the importance of the statutory policies underlying Title IV's remedial scheme. In *Calhoon* the Court rejected an attempt by union members to enjoin an upcoming election on the ground that union bylaw and constitutional provisions denied them their right to nominate candidates protected by Section 101(a)(1). The

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Titles I and V, 74 Colum. L. Rev. 1105 (1974); Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 Yale L.J. 407 (1972); Berchem, *Labor Democracy in America: The Impact of Titles I & IV of the Landrum-Griffin Act*, 13 Vill. L. Rev. 1 (1967).

Court concluded that eligibility claims like the plaintiffs' were properly enforced under Title IV, not Title I. 379 U.S. at 138-139. Regarding Title IV's post-election remedy, the Court went on to say (*id.* at 140):

> It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest. * * * In so doing Congress * * * decided not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV. Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.

Subsequent cases have added further justifications for adhering, where possible, to the structure created by Title IV:

> Congress made suit by the Secretary the exclusive post-election remedy for two principal reasons: (1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted * * *.

Trbovich v. *United Mine Workers*, 404 U.S. 528, 532 (1972). See also *Dunlop* v. *Bachowski*, *supra*, 421 U.S. at 568-570; *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463, 470-471 (1968).

Those important considerations are frustrated to the maximum degree where a court, as here, nullifies an election by preventing the counting of ballots and orders a new

election according to procedures and supervised by arbitrators dictated by the court. The Secretary's expertise in the conduct of elections is then entirely cast aside. The delay that can result is typified by the sequence in this case: the election nullified on December 12, 1980 was not rerun until exactly one year later (Pet. 18 n.39). A hearing to review the conduct of the nominations meeting, undertaken by Teamsters Joint Council 10, was cancelled when this action was filed (Pet. App. 15a-16a). Review of respondents' claims and the possibility of extra-judicial resolution by the Secretary was short-circuited. Moreover, it was only a fortuity—and one that will not necessarily recur in similar cases—that the claims concerning the conduct of the election were all consolidated in this action.

These consequences need not have occurred. The claims that the district court found warranted preliminary injunctive relief under Title I fell equally within the scope of the rights granted in Title IV. See, e.g., *Wirtz* v. *National Maritime Union*, 399 F. 2d 544, 548-549 (2d Cir. 1968). Had the district court not intervened, the ballots could have been counted less than 24 hours after the court issued a temporary restraining order, and the enforcement scheme set out in Section 402 (29 U.S.C. 482) could have been immediately implemented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DOJ-1982-11